

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

**CHERYL LEE**

**\* CIVIL ACTION**

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**\* NO. 22-174**

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**VERSUS**

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**\* JUDGE**

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**BOYD RACING, L.L.C. d/b/a DELTA  
DOWNS RACETRACK CASINO AND  
HOTEL, BOYD LOUISIANA RACING,  
L.L.C., BOYD GAMING CORPORATION  
AND SCHINDLER ELEVATOR  
CORPORATION**

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**NOTICE OF REMOVAL**

**NOW INTO COURT**, through undersigned counsel, come Boyd Racing, L.L.C., d/b/a Delta Downs Racetrack, Casino and Hotel, and Schindler Elevator Corporation, defendants in the action entitled “Cheryl Lee v. Boyd Racing, L.L.C. d/b/a Delta Downs Racetrack Casino and Hotel, Boyd Louisiana Racing, L.L.C., Boyd Gaming Corporation, and Schindler Elevator Corporation”, bearing Civil Action No. 2021-4100 (F) on the docket of the Fourteenth Judicial District Court for the Parish of Calcasieu, State of Louisiana, to notice removal of that Louisiana state civil court action to the United States District Court for the Western District of Louisiana, and upon information and belief represent:

1.

The 14th Judicial District Court for the Parish of Calcasieu, State of Louisiana, is located within the Western District of Louisiana pursuant to 28 U.S.C. §98. Therefore, venue is proper in

this court in accordance with 28 U.S.C. §1441(a) because it is the “district and division embracing the place where such action is pending.”

2.

On 24 September 2021, plaintiff, Cheryl Lee, filed suit in the Fourteenth Judicial District Court for the Parish of Calcasieu, State of Louisiana, against defendants, Boyd Racing, L.L.C. d/b/a Delta Downs Racetrack Casino and Hotel, Boyd Louisiana Racing, L.L.C., Boyd Gaming Corporation, and Schindler Elevator Corporation.

3.

In plaintiff’s Claim for Damages, she alleges that on or about 5 October 2020, plaintiff, a citizen and domiciliary of the State of Texas, was on an elevator at the Delta Downs Racetrack Casino and Hotel located in the Parish of Calcasieu, when suddenly and without warning, the elevator malfunctioned, causing it to abruptly drop and stop several times. Plaintiff claims unspecified injuries due to the elevator incident. Pursuant to 28 U.S.C. §1446(a), a copy of the Claim for Damages is attached hereto as Exhibit “A”.

4.

On 13 December 2021, plaintiff filed a motion to voluntarily dismiss Boyd Louisiana Racing, L.L.C. and Boyd Gaming Corporation from the Civil Action No. 2021-4100 in the Fourteenth Judicial District Court for the Parish of Calcasieu, which motion was granted on 3 January 2022, dismissing those defendants and reserving plaintiff’s rights against the remaining defendants.<sup>1</sup>

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<sup>1</sup> / See 3 January 2022 Order of Dismissal, attached as Exhibit “B.”

5.

This Court has diversity jurisdiction over this case under the provisions of 28 U.S.C. §1332, because plaintiff is a citizen and domiciliary of the State of Texas, and the remaining defendants, Boyd Racing, L.L.C. d/b/a Delta Downs Racetrack Casino and Hotel (“Delta Downs”) and Schindler Elevator Corporation (“Schindler”), are diverse from plaintiff. Delta Downs is a Louisiana limited liability company with a single member, Boyd Louisiana Racing, L.L.C., which is also a Louisiana limited liability company. Boyd Gaming Corporation is a Nevada corporation with its principal place of business in Nevada and, at all pertinent times hereto, was the sole owner of Boyd Louisiana Racing, L.L.C., thus Delta Downs is a citizen of Nevada. Schindler is a Delaware corporation with its principal place of business in New Jersey, thus Schindler is a citizen of Delaware and New Jersey.

6.

There is complete diversity of citizenship between plaintiff, a citizen of Texas, and defendants, Delta Downs, a citizen of Nevada, and Schindler a citizen of Delaware and New Jersey.

7.

Plaintiff’s state court action was filed on 24 September 2021. Defendant Delta Downs was served on 20 October 2021 and Schindler was also served on 20 October 2021. Delta Downs propounded discovery on plaintiff on 23 November 2021 and received plaintiff’s answers and responses to its propounded discovery on 10 January 2022.<sup>2</sup>

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<sup>2</sup>/ See plaintiff’s answers to Interrogatories and response to Request for Production of Documents, attached hereto as Exhibit “C”.

8.

In paragraph 5 of the Claim for Damages, plaintiff alleged that she suffered an array of injuries, specifically to her mental state, head, neck, left knee, right knee, and her lumbar spine.<sup>3</sup> In Paragraph 6 of the Claim for Damages, plaintiff alleged unspecified damages, including past, present and future medical expenses; past, present and future pain and suffering; past, present and future lost wages; emotional stress and strain; loss of enjoyment of life; and nursing and custodial care services.<sup>4</sup> Plaintiff did not include a general allegation in her Claim for Damages that her claim is less than the requisite amount required to establish that the federal courts lack jurisdiction due to insufficiency of damages, as required by La. C.C.P. art. 893(A)(1). Consequently, the amount in controversy was not apparent from the face of the lawsuit.

9.

In her discovery responses, plaintiff asserted that in addition to unspecified pain and suffering and medical expenses, her lost wages alone due to her alleged accident are \$79,166.60.<sup>5</sup>

10.

Given the extent of the alleged injuries suffered based on plaintiff's allegations in the Claim for Damages, her answers and responses to the discovery propounded by Delta Downs, and the medical records received by undersigned counsel, the amount in controversy of plaintiff's claim exceeds the sum of \$75,000, exclusive of interest and costs.

11.

Pursuant to the provisions of 28 U.S.C. §§1441 and 1446, this action is one that may be removed to the United States District Court for the Western District of Louisiana.

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<sup>3</sup>/ See Exhibit A, ¶ 5.

<sup>4</sup>/ See Exhibit A, ¶ 6.

<sup>5</sup>/ See Exhibit C, p. 11 (Answer to Interrogatory No. 21).

12.

This removal is filed within 30 days of service of Plaintiff's discovery responses upon defendants, whereby it first ascertained that this case, due to the amount in controversy, is one which is or has become removable. Moreover, this removal is filed within one year of the filing of suit, in accordance with 28 U.S.C. §1446(b).

13.

Therefore, this is a civil action over which the United States District Court for the Western District of Louisiana has concurrent jurisdiction under the provisions of 28 U.S.C. §1332, as the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and complete diversity exists between all adverse parties. As such, removal is proper.

14.

Pursuant to 28 U.S.C. §1446(d), written notice of filing of this Notice of Removal is being delivered to the plaintiff through her counsel of record, and a copy of this Notice of Removal will be filed with the clerk of the Fourteenth Judicial District Court for the Parish of Calcasieu.

15.

No previous application has been made for the relief requested herein.

**WHEREFORE**, premises considered, Defendants, Boyd Racing, L.L.C., d/b/a Delta Downs Racetrack Casino and Hotel, and Schindler Elevator Corporation, notice removal of the above-described state court action to this Honorable Court and pray for all general and equitable relief to which they are entitled.

Respectfully submitted,

MURPHY, ROGERS, SLOSS,  
GAMBEL & TOMPKINS

/s/ John H. Musser, V

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- and -

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on 19 January 2022, a copy of the foregoing pleading was sent to all counsel of record, either by operation of the Court's CM/ECF system, by hand, by email, by telefax or by placing same in the United States mail, properly addressed, and first class postage prepaid.

/s/ John H. Musser, V

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